that the rents had been paid by his assistant up to July, 1951 and that nobody had come to collect thereafter. The assistant gave evidence to the effect that he had paid the rents for May, June and July to the same rent collector who had come in April, 1951. He also stated that he had paid the rent for August to a different person, and it may be that he made a mistake here, as there is no suggestion that the rent for August was ever paid.

The learned Magistrate in his Grounds of Decision does not appear to me to have decided one way or the other whether he believed the plaintiff or the defendant on the question whether the plaintiff in fact called at the premises and demanded rent. Paragraph 2 of his Grounds of Decision reads as follows:—

"Plaintiff became owner of the said premises on 1st May, 1951 and rent had been paid to him by defendant for the months of May, June and July, 1951 vide counterfoil receipts — Exhibit P.2. Therefore defendant must have had knowledge that plaintiff was owner of the premises in August and September, 1951."

It seems to me that the learned Magistrate in drawing this conclusion misinterpreted the evidence given by the respondent. The respondent had said: "I received rent from the defendant for the months of May, June and July, 1951", but this statement does not necessarily mean that the defendant paid personally and I am inclined to think that the respondent did not mean this. I think all he meant was that he received rent and that it came from the defendant. The inference, therefore, that the defendant must have had knowledge that the plaintiff was the owner cannot be sustained on this evidence alone.

The most important ground of the Magistrate's decision is that contained in paragraph 3, in which he states that the defendant made no attempt to tender rent lawfully due before the receipt of the notice to quit. Mr. Abdoolcader for the appellant submitted that this amounted to a misdirection of himself by the Magistrate on the law. He contended that it is no part of the duty of a tenant to tender rent to the landlord but on the other hand it is the duty of the landlord to demand the rent on the premises, unless there is an express contract for payment of the rent elsewhere. He relied upon the English case of *Haldane v. Johnson*[1] and upon the decision of the Court of Appeal in *Thung Fun v. Looi Fong Um*[2] where the decision of Abbott, J., in *Kor Aik v. Tay Aik Liok*[3] was doubted.

The Court of Appeal in *Thung Fun v. Looi Fong Um*[2] did not specifically decide anything but sent the case back to be tried *de novo* by the Sessions Court. It is significant, however, that in so sending the case back they directed that the Court below should make a definite finding of fact on whether there was any agreement as to where the rent should be paid and whether a demand for the rent on the premises had been made. This combined with the doubt expressed in the judgment of Murray-Aynsley, C.J., as to the correctness of the case of *Kor Aik v. Tay Aik Liok*[3] leads me to the conclusion that the Court took the view that a demand for rent on the premises is necessary, and were following the decision of Evans, J., in *Tan Yee Moh v. Varthammal*[4]. In that case, too, the Court of Appeal found it necessary to send the case back in order to resolve the issue of fact as to whether there had been a demand for rent on the premises, but in their judgments they expressly agreed with that part of the judgment of Evans, J., which laid down that the landlord must demand the rent on the premises. (*Varthammal v. Tan Yee Moh*[5]). Upon these authorities I felt bound to hold that it is the duty of the landlord to make a demand for rent on the premises and that if he does not do so he cannot rely upon the proposition that rent is in arrear.

As the learned Magistrate has not in this case decided the issue as to whether there was a demand on the premises or not I decided I had no alternative but to send the case back for re-trial in order that this point might be resolved.

Re-trial ordered.

CHOP TOH NEO v. THE SINGAPORE TRACTION CO., LTD. & ANOR.

[O. C. J. (Brown, J.) November 19, 1952]

[Singapore — Suit No. 624 of 1952]

Practice — Costs — Apportionment — Where plaintiff accepts money paid into Court after hearing started — Bullock Order.

The 1st defendants had made a payment into Court with a denial of liability on the day before hearing. The hearing lasted 4 days and at the end of the 4th day, after counsel for the defendants had completed their final speeches but before completion of the final speech by counsel for the plaintiff, the plaintiff accepted the amount paid into Court and discontinued the action against the 2nd defendant.

Held: the proper course is to award costs upon the basis of what the judgment would have been on the various issues reached if it had been delivered.

ISSUE AS TO COSTS.

D. H. Murphy for the plaintiff.

J. D. Donnelly for the 1st defendants.

L. A. J. Smith for the 2nd defendant.

Cur. Adv. Vult.

Brown, J. : — The plaintiff, having now accepted the sum of $7,000 which the 1st defendants paid into Court with a denial of liability and having discontinued the action against the 2nd defendant, the only question which remains is what order should be made as to costs.

The plaintiff sued as the administratrix of the estate of her deceased husband and claimed damages to the estate and for the benefit of the deceased's dependants by reason of the defendants' negligence in causing a motor accident which resulted in the deceased being injured on the 6th September 1951. He died on 7th October 1951.

The issues were :—

(1) Whether the defendants, or either of them, had been guilty of negligence;

(2) If so, whether the death of the deceased was caused by the negligence or by some "**novus actus interveniens**".

(3) If the death was caused by the defendants' negligence what damages should be awarded under section 8 of the Civil Law Ordinance;

(4) If the injury but not the death was caused by the defendants' negligence, what damages should be awarded under section 7 of the Civil Law Ordinance in respect of the cause of action which vested in the deceased prior to his death for the pain which he suffered and for what is called "loss of expectation of life";

(5) Special damages.

The 1st defendants paid the sum of $7,000 into Court in the afternoon of the day before the hearing started. The hearing lasted four days, and at the end of the 4th day counsel for the 1st, and 2nd defendants had completed their final speeches and counsel for the plaintiff was addressing the Court having dealt substantially with the 2nd issue.

On behalf of the plaintiff it is said that in paying the money into Court on the day before the hearing the 1st defendants deprived the plaintiff of the 7 days which O.23 Rule 2(1) provides. Against that the plaintiff has had the considerable advantage of hearing all the evidence before having to make up her mind whether to accept the sum paid in or not. And as I have had all the evidence before me I think that the proper course is to award costs upon the basis of what my Judgment would have been if it had been delivered.

If the case had gone to Judgment I should have held (1) that the first defendants' driver was solely to blame for the accident; (2) that the death of the deceased was not due to the injury which he received at the time of the accident, but to his own disregard of the doctor's instruction which operated as a '*novus actus interveniens.*' The plaintiff would then have been entitled to recover from the 1st defendants the whole of the costs of the action up to the date of payment in, and the subsequent costs of the issues on which she succeeded. The plaintiff would have been liable for the 2nd defendant's costs, which she could have recovered on a Bullock order from the 1st defendants. I accordingly order :—

(1) Plaintiff must pay the 2nd defendant's costs;

(2) The 1st defendant must pay the plaintiffs costs up to the date of payment in including the costs payable by plaintiff to 2nd defendant; and thereafter upon the issues of —

(a) 1st defendant's negligence, (the first issue).

(b) Damages under section 7 of the Civil Law Ordinance (4th issue).

(c) Costs of hearing all medical evidence. I make this part of the order because I consider that as the plaintiff was deprived of the advantage of having 7 days to consider whether to accept the money or not she should not be penalised for failing to make up her mind before the expert medical evidence was called during the first and second days of the hearing.

(3) The plaintiff must pay the first defendant's costs incurred after the date of payment in upon the issues of —

(a) The "**novus actus interveniens**" (2nd issue); (except costs of hearing medical evidence).

(b) Damages under section 8 of the Civil Law Ordinance (3rd issue);

(c) Special damage. (5th issue).

These costs will be on Higher Scale and in taxing these costs the Registrar is to apportion the costs under items (2) and (3) above between the five issues set out therein.

I further order that the sum of $7,000, now in Court, be paid out to the plaintiff.

Order accordingly.

TAN SAI HOON (f) v. TAN SONG CHUA & ANOR.

[O. C. J. (Buhagiar, J.) November 13, 1952]

[J.B. — Civil Suit No. 4 of 1949]

Civil Procedure Code, ss. 298 and 299 — Order of attachment — Objection by 3rd party — Whether procedure to vacate can be by fresh suit.

The plaintiff claims to be owner of property which was ordered to be attached in an action in which judgment was given for the 1st defendant against the 2nd. The plaintiff proceeded by a separate suit praying for a declaration that she is the owner and for an order to set aside the order of attachment. Counsel for the 1st defendant raised a preliminary objection on the ground that the plaintiff should have proceeded by application for release of the property attached as provided by section 298 of the Civil Procedure Code.

Held: the procedure laid down in sections 298 and 299 of the Civil Procedure Code is not exclusive but cumulative.

Cases referred to :—

(1) *Wai Seng Leng v. Chait Singh* (1939) M.L.J. 316.

(2) *Sundar Singh & ors. v. Ghasi & ors.* 18 All. 410.

CIVIL SUIT.

A. Muthuswamy for the plaintiff.

C. G. Toh for the 1st defendant.

2nd defendant not represented.